

HOUSE No. 2172

By Mr. Quinn of Dartmouth, petition of John F. Quinn relative to the definition of common nuisance. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO THE DEFINITION OF COMMON NUISANCE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 139 of the General Laws, as appearing in the 2002
2 Official Edition, is hereby amended by adding at the end thereof
3 the following sections:

4 Section 21. Every building, part of a building, tenement or
5 place used for a residential or commercial purpose, whether occu-
6 pied or vacant, that is maintained and/or managed in such a
7 manner so as to interfere with the quiet enjoyment of the sur-
8 rounding premises, public ways and public open spaces or not
9 maintained and/or managed in a manner that is substantially sim-
10 ilar to the majority of the properties in the surrounding census
11 tract or is inconsistent with the use as permitted by local zoning
12 by-law shall be deemed a nuisance.

13 Section 22. Whoever keeps or maintains such a nuisance shall
14 be punished by a fine of not less than one hundred nor more than
15 one thousand dollars and by imprisonment for not less than three
16 months nor more than three years.

17 Section 23. Whenever there is reason to believe that such a nui-
18 sance is kept or maintained or exists in any town, either the dis-
19 trict attorney for the district, or the attorney general, in the name
20 of the commonwealth, or a citizen in his own name, may bring a
21 civil action perpetually to enjoin the person conducting or main-
22 taining the same, and the owner, lessee or agent of the building or
23 place in or upon which such nuisance exists and their assignees
24 from directly or indirectly maintaining or permitting such nui-
25 sance.

26 Section 24. The complaint shall join the owner of record of the
27 premises as a party defendant and shall be filed in the superior
28 court for the county where the nuisance is believed to exist, and
29 shall be verified by oath of the plaintiff unless filed by the
30 attorney general or a district attorney. Such proceeding shall have
31 precedence over all other matters upon the docket except criminal
32 proceedings, election contests and hearings upon actions for other
33 injunctions.

34 Section 25. If upon a hearing, after at least two days' notice to
35 the respondents of the time and place assigned therefor, the exis-
36 tence of such a nuisance is shown to the satisfaction of the court
37 or justice, either through verified complaint or through evidence
38 in the form of affidavits, depositions, oral testimony or otherwise,
39 a temporary injunction shall be ordered to issue forthwith
40 restraining the maintenance of the nuisance and enjoining the
41 occupants, owner and all other persons from removing fixtures,
42 furniture, musical instruments and all other movable property
43 from the premises until further order of the court.

44 Section 26. If upon subsequent hearing the existence of the
45 nuisance shall be established, the court shall enter a decree perma-
46 nently enjoining the maintenance thereof, including in such decree
47 an order of abatement directing the sheriff of the county or his
48 deputy to enter the building or place where the nuisance existed
49 and to sell all furniture, musical instruments and movable property
50 used in maintaining the nuisance, in the manner provided for the
51 sale of chattels under execution, and to remove the same. If it
52 shall appear that the bill of complaint was filed five or more days
53 after notice to the record owner of the premises, and that he did
54 not proceed forthwith to enforce his rights under section nineteen,
55 such order of abatement shall further direct the effectual closing
56 of the building or the place and the prohibition of its use for any
57 purpose for one year, unless sooner released as provided in section
58 eleven. For the purpose of proving the existence of the nuisance
59 the general reputation of the place shall be admissible as evidence.

60 Section 27. For removing and selling the movable property in
61 accordance with the decree of the court the officer shall be enti-
62 tled to the same fees as for levying upon and selling like property
63 on execution, and for closing the premises and keeping them
64 closed, a reasonable sum shall be allowed by the court. The pro-

65 ceeds shall be applied: first, to the fees and costs of removal and
66 sale; second, to the allowances and costs of so closing and
67 keeping closed the premises; third, to the payment of the com-
68 plainants' costs in such proceeding, including a reasonable attor-
69 ney's fee to be fixed by the court; fourth, the remainder, if any, to
70 the owner of the property sold.

71 Section 28. If the owner of any such premises shall pay all
72 costs of the proceedings, and file with the court a bond with
73 sureties approved by the clerk in the full value of such premises as
74 ascertained by the court, or, when the court is not in session, by
75 the clerk, payable to the court and conditioned that the owner of
76 the premises found to be a nuisance will immediately abate such
77 nuisance and prevent the same from being established or kept
78 therein within one year thereafter, the court or justice may, if sat-
79 isfied of the owner's good faith, order the premises so closed to be
80 delivered to such owner and the order of abatement to be so modi-
81 fied as to dissolve the order that the premises remain closed for
82 one year; provided, that such modification shall not release such
83 premises from any judgment, lien, penalty or liability to which it
84 may be subject.

85 Section 29. No action commenced under section six shall be
86 dismissed, except upon a sworn statement made and filed by the
87 plaintiff and by his attorney setting forth the reasons for dismissal
88 thereof and upon approval of such dismissal by the court in open
89 court. If the court is of opinion that the action ought not to be dis-
90 missed he may direct the district attorney to prosecute the case to
91 judgment. If the action was brought by a citizen and the court
92 finds that there was no reasonable ground therefor, costs may be
93 awarded against the plaintiff.

94 Section 30. All persons found in or upon premises used pur-
95 suant to the provisions of section 21 may be required by a justice
96 of a court of record to recognize, with or without sureties, to
97 appear as witnesses at any hearing in an action to punish a person
98 for keeping or maintaining such a nuisance as is described in
99 section four, or for aiding in the maintenance of such a nuisance in
100 the manner set forth in section twenty, or to enjoin or abate such a
101 nuisance, and a warrant may be issued to bring such persons
102 before the justice to recognize as aforesaid.